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) Docket No. CAA-5- 2001-0 02  
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) Proceeding to Assess  
) Administrative Penalty  
) under Sections 113(d)  
) of the Clean Air Act  
) 42 U.S.C. § 7413 and Class II  
) Civil Penalty under Section 311  
) of the Clean Water Act,  
) 33 U.S.C. § 1321  
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) 33 U.S.C. § 1321

CAA-5- 2001-002

This civil administrative action is instituted pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990 ("OPA") and pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, ("Consolidated Rules") against Respondent, Consumers Recycling, Inc. (Consumers) for administrative penalties. The Complainants are, by lawful delegation, the Directors of the Air and Radiation Division for the violations of the CAA alleged in this Complaint and the Superfund Division for the violations of the CWA alleged in this Complaint. They jointly issue this Complaint.

## I. STATUTORY AND REGULATORY BACKGROUND

### A. CLEAN AIR ACT

1. Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), provides, in part, that the Administrator of the U.S. EPA shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration.

2. The term "class I substance" means each of the substances listed as provided in Section 602(a) of the CAA, 42 U.S.C. § 7671a(a) and Section 601(3) of the CAA, 42 U.S.C. § 7671(3) and Appendix A to Subpart A of Part 82, 40 C.F.R. Part 82.

3. The term "class II substance" means each of the substances listed as provided in Section 602(b) of the CAA, 42 U.S.C. § 7671a(b) and Section 601(4) of the CAA, 42 U.S.C. § 7671(4) and Appendix B to Subpart A of Part 82, 40 C.F.R. Part 82.

4. The term "appliance" is defined in Section 601(1) of the Act, 42 U.S.C. § 7671(1), and 40 C.F.R. § 82.152(a), as any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

5. The term "small appliance" is defined in 40 C.F.R. § 82.152 to include home refrigerators and freezers, room air conditioners, dehumidifiers and other devices manufactured, charged and hermetically sealed with five pounds or less of a refrigerant.

6. On May 14, 1993, pursuant to Section 608(a) of the Act, 42 U.S.C. § 7671g(a), U.S. EPA published regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration units. These regulations, which have been subsequently amended, are codified in Title 40 of the Code of Federal Regulations, Part 82, Subpart F.

7. 40 C.F.R. § 82.156(f) requires, in part, that, effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to, scrap recyclers and landfill operators) of a small appliance, room air conditioning, motor vehicle air conditioners (MVAC), and MVAC-like appliances must either recover any remaining refrigerant from the appliance in accordance with specific procedures described in 40 CFR § 82.156(g) or (h), or verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliances. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

8. 40 C.F.R. § 82.166(i) requires, in part, that, effective November 14, 1994, persons disposing of small appliances, MVACs, and MVAC-like appliances must maintain copies of signed statements obtained pursuant to 40 CFR § 82.156(f).

**B. CLEAN WATER ACT**

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges".

10. The regulations at 40 C.F.R. Part 112 set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. The regulated facilities include those that drill for, produce, gather, store, process, refine, transfer, distribute or consume oil or oil products.

11. The effective date of the regulations at 40 C.F.R. Part 112 was January 10, 1974 ("effective date").

**II. FACTUAL ALLEGATIONS****A. GENERAL**

12. Consumers is a Michigan corporation with its principal place of business in Detroit, Michigan.

13. Consumers is the owner and operator of the facility, located at 7777 West Chicago Ave, Detroit, Michigan ("the Consumers facility").

14. Consumers processes scrap metal, including refrigerators and small appliances which have been disposed of by their original owner.

15. Consumers segregates the scrap metal it receives at the Consumers facility.

16. Consumers has owned and operated the Consumers facility since April 1983.

17. Baby Creek, the Detroit and Rouge Rivers are navigable waters located within 5 miles of the Consumers facility.

18. Consumers is located within the water drainage district serviced by the City of Detroit combined sewer system.

19. Consumers has a floor drain located within its maintenance shop at the Consumers facility. This floor drain is in proximity to three above ground storage tanks which Consumers used to store hydraulic and lubricating oil.

20. There are four storm drains/sewers located on the Consumers facility property. Two storm sewers are located in the southeast section of the facility. Two storm sewers are located in the northeast section of the facility near Consumers' 1000 gallon above ground storage tank.

21. There are 2 storm drains located on the street and within 50 feet of Consumers. One storm drain is located on West Chicago within 30 feet of Consumers' facility. The other storm drain is located on Central Avenue.

22. The drains identified in paragraphs 19-21 above are connected to the City of Detroit combined sewer system.

23. Water collected in the drains identified in paragraphs 19-21 above may be directed to either the Detroit River via the City of Detroit Waste Water Treatment Plant or, under certain storm events, directly to Baby Creek and the Rouge River.

24. The City of Detroit Waste Water Treatment Plant discharges to the Detroit River.

25. On July 15 and 21, 1999, U.S.EPA, Region 5, conducted inspections of the Consumers facility.

**B. CLEAN AIR ACT RELATED**

26. Consumers accepted at the Consumers facility small appliances, such as refrigerators, air conditioners or parts thereof.

27. From at least January 1, 1996 to November 1, 2000, Consumers

a. did not perform any recovery of refrigerant from the small appliances it received at the Consumers facility;

b. did not collect statements from the suppliers of the small appliances verifying that refrigerant was recovered from them prior to delivery to Consumers' facility ("verification statement")

c. did not have contracts with any suppliers requiring recovery of refrigerants from small appliances prior to delivery of such appliances to Consumers' facility.

28. On July 15, 1999 there were many piles of various scrap items at the Consumers facility. Consumers segregated many items of scrap into piles (e.g., there was a pile of computers). Consumers sorted through the piles to collect certain metals, (e.g., precious metals from the computer circuit boards). Consumers would then compress or crush and bale the remaining items in the pile (e.g., plastic bodies of the computers).

29. On July 15, 1999 there were three large piles of mixed scrap at the Consumers facility. Six refrigerators, air conditioners or parts thereof were thrown into or mixed with the other sheet metal and scrap metal contained in these three large piles. Consumers was not sorting through these three piles prior to compressing or baling them.

30. Since January 1, 1996, Consumers received at least six loads of small appliances such as refrigerators for disposal.

31. Since January 1, 1996, Consumers received for disposal an unknown number of small appliances, such as refrigerators, mixed in loads of scrap contained in roll-off boxes it received.

32. On January 13, 2000, Margaret M. Guerriero, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation (FOV) to Consumers, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. The FOV cited violations of Section 608(c) of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. §§ 82.156(f) and 82.166(i). On November 27, 2000 and December 12, 2000, pursuant to section 113(d) of the CAA, 42 U.S.C. §7413(d), the Attorney General and the Administrator, respectively, approved Complainant's, Director of the Air and Radiation Division, filing Counts I and II more than one year after the date of the incurrence of the violations.

**C. CLEAN WATER ACT RELATED**

33. Consumers installed a 1,000 gallon drum catch basin in 1995. The drum catch basin is located near the east loading dock area at the facility.

34. Since January 1, 1996 Consumers has used the drum catch basin to collect used oil from 55-gallon drums it received from its customers.

35. Since at least July 21, 1999, there were twelve tanks above ground at the Consumers facility.

36. The total storage capacity of the twelve tanks was 3,345 gallons. The tanks and their storage capacity are as follows:

- a. 2 - 550 gallon metal tanks used for diesel fuel;
- b. 3 - 275 gallon metal tanks used for hydraulic and lubricating oil;

- c. 1 - 1000 gallon metal collection pan for used oil;
- d. 1 - 50 gallon metal tank used for gasoline;
- e. 1 - 50 gallon plastic tank used for waste oil; and
- f. 4 - 55 gallon metal drums used for miscellaneous waste oil and grease.

37. The topography of the Consumers facility slopes from south to north toward Chicago avenue.

38. Surface water run off flows from south to north toward the storm water drains and the city storm sewers located along Chicago avenue.

39. During the July 21, 1999, inspection there were:

- a. oil stains on the ground at the facility; and
- b. water run-off patterns to the street and to the Detroit sewer system.

40. From at least July 1, 1996 to June 30, 2000, Consumers did not have a Spill Prevention, Control and Countermeasures Plan (SPCC Plan).

### III. VIOLATIONS

#### A. COUNT I - CLEAN AIR ACT

##### ***FAILURE TO PROPERLY RECOVER OR OBTAIN VERIFICATION STATEMENTS FOR PROPER EVACUATION OF OZONE DEPLETING REFRIGERANTS.***

41. Paragraphs 1-8, 12-16 and 25-32 are incorporated herein as if set forth in their entirety.

42. Consumers is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

43. Consumers is a person who disposed of or took the final step in the disposal process ("disposed") of small appliances as part of its business operations at the Consumers facility. Consumers is, therefore, subject to the regulations at 40 C.F.R. Part 82, Subpart F.



44. Consumers disposed of refrigeration and air conditioning units or parts thereof without either recovering refrigerant from the units in accordance with 40 C.F.R. § 82.156(g) or (h); or verifying that the refrigerant had been evacuated from the units previously, in accordance with the specific requirements of 40 C.F.R. § 82.156(f)(2).

45. The refrigeration and air conditioning units or parts thereof that Consumers disposed were "small appliances", as that term is defined in 40 C.F.R. § 82.152.

46. Consumers' disposal of small appliances as set forth in this Count I and paragraphs 29 - 31 constitutes at least twelve separate violations of 40 C.F.R. § 82.156(f) and section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

#### **B. COUNT II - CLEAN AIR ACT**

##### ***FAILURE TO RETAIN RECORDS RELATIVE TO THE PROPER EVACUATION OF OZONE DEPLETING REFRIGERANTS***

47. Paragraphs 1-8, 12-16 and 25-32 are incorporated herein as if set forth in their entirety.

48. Consumers is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

49. Consumers is a person who disposed of or took the final step in the disposal process ("disposed") of small appliances as part of its business operations at the Consumers facility. Consumers is, therefore, subject to the regulations at 40 C.F.R. Part 82, Subpart F.

50. Consumers disposed of refrigeration and air conditioning units or parts thereof without either recovering refrigerant from the units in accordance with 40 C.F.R. § 82.156(g) or (h); or verifying that the refrigerant had been evacuated from the units previously, in accordance with the specific requirements of 40 C.F.R. § 82.156(f) (2).

51. The refrigeration and air conditioning units or parts thereof that Consumers disposed were "small appliances", as that term is defined in 40 C.F.R. § 82.152.

52. Consumers did not maintain or retain records of its disposal or verification statements for the appliances identified in paragraphs 29 - 31 as required by 40 C.F.R. §82.166(i) and (m) and section 113(a) (3) of the CAA, 42 U.S.C. §7413(a) (3). Consumers' failure to maintain or retain such records for these appliances as set forth in this Count II constitutes at least twelve separate violations of 40 C.F.R. § 82.166(i) and (m) and section 113(a) (3) of the CAA, 42 U.S.C. § 7413(a) (3).

### **C. COUNT III - CLEAN WATER ACT**

#### ***FAILURE TO HAVE AN SPCC PLAN***

53. Paragraphs 9-25 and 33-40 are incorporated herein as if set forth in their entirety.

54. Consumers is a "person" within the meaning of Sections 311(a) (7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a) (7) and 1362(5), and 40 C.F.R. § 112.2.